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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1960

No. [redacted] 136

CONSOLIDATED TITLE CORPORATION, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 996

CONSOLIDATED TITLE CORPORATION, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Although petitioner states in its petition that it relies upon the Fifth Amendment to the Constitution, and although it refers to the District of Columbia Revenue Act of 1939 (Act of July 26, 1939, 53 Stat. 1087, ch. 367) as one of the statutes involved, it has not included in its petition either the text of the Fifth Amendment or pertinent pro-

visions of the District of Columbia Revenue Act of 1939. Notwithstanding it does not believe the Fifth Amendment to the Constitution is applicable in this case, respondent has, for the convenience of the Court, included in the appendix to its brief the text of the amendment, together with pertinent provisions of the District of Columbia Revenue Act of 1939 and, additionally, pertinent provisions of the District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 328, ch. 258, as amended.

QUESTIONS PRESENTED

In the view of respondent, the questions presented are:

1. Where, for the years 1939 to 1946 inclusive, the District of Columbia Revenue Act of 1939 imposed a tax upon the income from District of Columbia sources of every corporation, whether domestic or foreign, except those corporations expressly exempt from tax (and petitioner is not so exempt), was not the United States Court of Appeals for the District of Columbia Circuit correct in holding that petitioner, as a corporation having its commercial domicile and residence within the District, was liable under said Act to a tax upon income in the form of dividends having their sources within the District and received by petitioner from subsidiary corporations controlled by it within the District.

2. Where the District of Columbia Income and Franchise Tax Act of 1947 imposes upon corporations a franchise tax for the privilege of carrying on or engaging in "any trade or business" or "commercial activity" within the District and of receiving income from sources within the District, was not the United States Court of Appeals for the District of Columbia correct in holding that petitioner, for the years 1947 to 1957 inclusive, was liable to tax on the income derived by it, a corporation carrying on all of its corporate activities within the District of Columbia, from dividends received by it from subsidiary corporations which petitioner controlled within the District.

COUNTERSTATEMENT OF THE CASE

Petitioner, a corporation, was organized under the laws of Maryland in 1934 pursuant to a plan of reorganization of a corporation known as Washington Consolidated Title Company, which owned all of the capital stock of Lawyers Title Insurance Company, 85 per centum of the capital stock of District Title Insurance Company, and 76 per centum of the stock of Washington Title Insurance Company (R. 12-13).

Lawyers, District and Washington Title Insurance companies were and are District of Columbia corporations with their joint principal office at 1413 Eye Street, N. W., Washington, D. C., where they jointly engage in the business of issuing land title insurance, land title certificates, the making of settlements of transfers of land and other business activities usually conducted by title companies (R. 13).

During all of the taxable years involved, petitioner maintained an office at 1413 Eye Street, N. W., Washington, D. C. at which were kept its books and records including its corporate minute book and where petitioner held all meetings of its directors and officers and to which were referred all persons having business or other matters with petitioner. (R. 12).

Since the latter part of 1956 petitoner has had an office in Silver Spring, Maryland, in premises occupied by its operating subsidiaries. However, no space in those premises was assigned to petitioner; no office or employee of petitioner was located there, petitioner held no meetings of its directors or officers in that office, and none of petitioner's records were kept there. If any person inquired at the Silver Spring office concerning business or any other matter relating to the petitioner such person was directed to take the matter up with an officer of petitioner at its office at 1413 Eye Street, N. W., Washington, D. C. (R. 13).

Petitioner, since the year 1949, has not filed income tax returns with the State of Maryland. Returns filed by peti-

tioner with the State of Maryland from 1941 to 1949, inclusive, do not report or show dividends received by petitioner from its subsidiaries and, further, reported to the State of Maryland that petitioner owed no income taxes to that state. Petitioner has paid an income tax to the State of Maryland only for the years 1937 through 1949 (R. 29). Petitioner never filed with the District of Columbia an income tax or franchise tax return for the calendar years 1939 to 1956, inclusive, nor did petitioner through any officer, attorney, or agent ever inquire of or confer with any officer or agent of the District of Columbia concerning the matter of its liability for income taxes during the years 1939 to 1946, inclusive, or for franchise taxes for the years 1947 through 1956, or concerning its duty to file its returns under the respective taxing acts (R. 30).

On August 7, 1956, the assessing authority of the District sent to petitioner a notice of proposed deficiency assessments of taxes against it under the 1939 Revenue Act and under the Income and Franchise Tax Act of 1947. Subsequently, on July 9, 1958, after considering petitioner's claims that it was not taxable, the District assessed against petitioner under the 1939 Revenue Act deficiencies in income taxes for the years 1939 through 1946, inclusive, and deficiencies in franchise taxes under the Income and Franchise Tax Act of 1947 for the years 1947 through 1955, inclusive, together with penalties and interest. On September 25, 1958, deficiency assessments were made against petitioner for franchise taxes for the years 1956 and 1957. These taxes were paid by petitioner on October 6, 1958. Thereafter, it filed petitions in the District of Columbia Tax Court for a review of the assessments of taxes against it. (R. 32-36.)

The Tax Court, on March 17, 1959, rendered decisions holding that, with the exception of certain interest imposed against petitioner and with the exception of certain modifications resulting from the evidence adduced at trial, the

assessments of taxes, penalties and interest against petitioner were correct and these assessments, as modified, were affirmed (R. 67-76). On appeal to the United State Court of Appeals for the District of Columbia Circuit, that Court affirmed the decisions of the Tax Court (R. 88). On April 1, 1960, the Court of Appeals denied a petition filed by petitioner for a rehearing en banc of these cases. (R. 90).

SUMMARY OF ARGUMENT

Petitioner does not set forth adequate reasons for the granting of its petition for writ of certiorari. Such reasons as it does give do not bring the case within considerations governing review on certiorari encompassed in Rule 19 of the rules of this Court. The decision of the United States Court of Appeals for the District of Columbia Circuit accords with its own prior decisions and with the statutory provisions involved, and, to the extent that they are applicable, accords also with decisions of this Court. No substantial questions are presented by petitioner which call for the exercise by this Court of its jurisdiction to review this case on writ of certiorari.

ARGUMENT

I

The statutes involved in this case are the District of Columbia Revenue Act of 1939 and the District of Columbia Income and Franchise Tax Act of 1947. These statutes are directed solely to the raising of revenues for the administration of the District of Columbia Government; they do not have application outside the District. This Court has stated that, in the absence of extraordinary reason, which this case does not present, it will not review proceedings arising under statutes of such limited applicability. *American Security & Trust Co.* v. *District of Columbia*, 224 U.S. 491, 56 L. Ed. 856, 32 S. Ct. 553; *United Surety Co.* v. *American Fruit Product Co.*, 238 U.S. 140, 59 L. Ed. 1238, 35 S. Ct.

828. In *Del Vecchio* v. *Bowers*, 296 U.S. 280, 80 L. Ed. 229, 56 S. Ct. 190, speaking of a statute confined in its operation to the District of Columbia, this Court said:

> "* * * We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of the District."

The considerations which, in Rule 19 of its rules, this Court has said shall govern review on certiorari do not contemplate the granting of a petition for certiorari where, as the record herein shows, the United States Court of Appeals for the District of Columbia Circuit has clearly rendered its judgment in accordance with local law.

II

Section 2(b) of the District of Columbia Revenue Act of 1939 imposed a tax for each taxable year "upon the taxable income from District of Columbia sources of every corporation, whether domestic or foreign" except certain corporations which the statute denominated as expressly exempt from tax. The District of Columbia Tax Court concluded and the Court of Appeals agreed that the income received by petitioner from its operating subsidiaries constituted income from District of Columbia sources (R. 40-41; 86). As the Court of Appeals said:

> "The Tax Court held, and we agree, that petitioner received its income from 'sources within the District' and was therefore subject to these taxes. The 'sources' were petitioner's subsidiary corporations. Since they had their principal offices and businesses in the District, they were 'within the District'; they were '"domiciled" therein, corporately and commercially', as the Tax Court found. It is immaterial that some of their business was done elsewhere. We are not concerned with

> the sources of their income, but only with the sources of petitioner's income."

It is pertinent to note that in that portion of its petition wherein it sets forth its reasons for the granting of a writ of certiorari petitioner says:

> "The primary question in this case relates to the statutory construction of the following provision of the Income and Franchise Tax Act of 1947 relating to taxation of corporations * * *". (Petition, P. 6).

It would appear that petitioner does not seriously contest its liability to income tax under the Revenue Act of 1939 for, although it refers to that Act, it substantially limits its argument to the District of Columbia Income and Franchise Tax Act of 1947.

III

This Court in *National Insurance Co.* v. *Tidewater Company*, 337 U.S. 582, 93 L. Ed. 1556, 69 S. Ct. 1173, cited with approval the decision of the United States Court of Appeals for the District of Columbia in *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246. In the *Neild* case, the Court of Appeals, at page 310, 311 of its opinion, said:

> "* * * Subject only to those prohibitions of the Constitution which act directly or by implication upon the Federal government, Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. In fact, when it legislates for the District, Congress acts as a legislature of national character, exercising complete legislative control as contrasted with the limited powers of a state legislature, on the one hand, and as contrasted with the limited sovereignty which Congress exercises within the boundaries of the

> states, on the other. * * * When it acts by virtue of these general legislative powers it is free of the restraints which are imposed by the Constitution upon the States."

In many of its decisions concerning the power of the Congress over the District of Columbia, this court has expressed itself in similar vein. *Parsons* v. *District of Columbia*, 170 U.S. 45, 42 L. Ed. 943, 18 S. Ct. 521; *Wight* v. *Davidson*, 181 U.S. 371, 45 L. Ed. 900, 21 S. Ct. 616; *Atlantic Cleaners & Dyers* v. *United States*, 286 U.S. 427, 76 L. Ed. 1204, 52 S. Ct. 607; *District of Columbia* v. *Thompson Co.*, 346 U.S. 100, 97 L. Ed. 1480, 73 S. Ct. 1007; *Stoutenburg* v. *Hennick*, 129 U.S. 141, 32 L. Ed. 637, 9 S. Ct. 256; *O'Donoghue* v. *United States*, 289 U.S. 516, 77 L. Ed. 1356, 53 S. Ct. 740; *Capital Traction Co.* v. *Hof*, 174 U.S. 1, 43 L. Ed. 873, 19 S. Ct. 80.

As the courts of the District of Columbia have held, the District of Columbia Income and Franchise Tax Act of 1947 imposes a tax upon the privilege of engaging in business within the District, as well as upon the receipt of income from District of Columbia sources. To this extent the District's statute is similar in its context and the subject matters of tax to the taxing statutes in force in many of the states. The United States Court of Appeals in 1953 in *Lever Bros.* v. *District of Columbia*, 92 U.S. App. D. C. 147, 204 F. 2d 39, concluded, moreover, that the District of Columbia Income and Franchise Tax Act of 1947 imposes a tax upon income received from District of Columbia sources even though the corporation receiving that income is not "doing business" in the District. That decision accords also with the decision of the Court of Appeals in *District of Columbia* v. *Virginia Hotel Co.*, 92 U.S. App. D. C. 186, 204 F. 2d 390, to which the court's opinion in the instant case referred.

The decisions of this Court and of other courts upon which petitioner relies involved, to a large degree, problems relating to the authority of local taxing jurisdictions to impose taxes upon taxpayers engaged in multistate operations

To the extent that these cases may have defined or limited the authority of the states in taxing matters, they are not applicable to the District since Congress, under its plenary power, is, of course, not subject to the limitations which might be applicable in the case of a state or other local taxing jurisdiction. But, in any event, petitioner in this case was not, as both the Tax Court and the Court of Appeals observed, taxed upon income which resulted from multistate or multijurisdictional operations. *It was taxed upon income derived by it in the District of Columbia from sources confined to the District.* As the Court of Appeals observed in its decision, speaking of the income received by petitioner's subsidiary corporations which in turn was paid to petitioner in the form of dividends:

> "* * * It is immaterial that some of their business was done elsewhere. We are not concerned with the sources of *their* income, but *only with the sources of petitioner's income.*" (Emphasis supplied).

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

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